Table of Contents

Index to Airports

CHS = Charleston International Airport

IAH = Houston Intercontintential Airport

JAX = Jacksonville International Airport

LAS = Las Vegas McCarran Airport

MWAA= Metropolitan Washington Airports Authority

PHX = Phoenix International Airport

Appendix
Chapter VII Professional Services

Contents

7.1 Critical Issues in Professional Services Agreements 2
7.1.1 Designated Representative (Both Parties) 2
7.1.2 Project Deliverables 2
7.1.3 Additional Services 2
Excerpt from CHS Consultant Services Agreemen**t 2**

7.1.4 Relationshiop of Parties 3
Excerpt from IAH Concessions Services Agreement 3

7.1.5 Ownership of Documents 3
Excerpt from MWAA Consultant Services Agreement 3
Excerpt from IAH Consultant Services Agreement 4
Excerpt from CHS Consultant Services Agreement 5

7.1.6 Schedule and Excusable Delays 6
Excerpt from IAH Concessions Services Agreement 6

7.1.7 Budget 6
7.1.8 Confidentiality 6
Excerpt from IAH Concessions Agreement 6

7.1.9 Warranties/Errors and Omissions Insurance 7
Excerpt from PHX Professional Services Agreement 7

7.1.10 Professional Certifications 9
Excerpt from JAX Ground Handling Agreement 9

7.1.11 Payment Terms 9
Excerpt from IAH Concessions Services Agreement 9

7.1.12 Assignment 10
Excerpt from CHS Consultant Agreement 10

7.1.13 Place of Work 10
7.1.14 Termination Provisions 10
Excerpt from CHS Consultant Agreement 10
Excerpt from LAS Mystery Shopper Agreement 11

7.1 Critical Issues in Professional Services Agreements

7.1.1 Designated Representative

7.1.2 Project Deliverables

7.1.3 Additional Services

CHS

7.1 Critical Issues in Professional Services Agreements

7.1.1 Designated Representative (Both Parties)

7.1.2 Project deliverables

7.1.3 Additional services

Excerpt from CHS Consultant Services Agreement:

> *SECTION 7: COMPENSATION FOR ADDITIONAL SERVICES*
>
> *The AUTHORITY may request services from the CONSULTANT beyond those described in Exhibit A. The scope of the services and the fee ceiling for each request for such additional services shall be agreed to in writing by the AUTHORITY and the CONSULTANT prior to the performance of such additional services, and a work authorization shall be issued covering such additional services.*
>
> *Amounts due for such additional services shall be incorporated into the monthly invoices specified in Section 6 of this Agreement.*

7.1.4 Relationship of parties

IAH

7.1.4 Relationship of parties

Excerpt from IAH Concession Services Contract:

6.1 Independent Contractor

Contractor shall perform its obligations under this Contract as an independent contractor and not as an employee of the City.

7.1.5 Ownership of documents

MWAA

7.1.5 Ownership of documents

Excerpt from MWAA-Eclat Air Service Marketing Agreement:

IV. DELIVERABLES/ACTIONS

1. Analyses

A. Depending on the specific scope and type of individual requests for consultant services, deliverables may be in the form of published and/or electronic presentations, basic research, written opinions, verbal opinions, etc.

B. All printed deliverables shall be simultaneously provided in electronic format as per the current Authority Software Standards. At present, software standards are:

Text Microsoft	*Word 2003*
Spreadsheets Microsoft	*Excel 2003*
Presentations/Slides	*Microsoft Power Point 2003*
Database Microsoft	*Access 2003*
Communications	*Must have Internet and E-Mail accounts*

Deliverables for tasks performed for t he Authority must be readable in compact disk format, compatible with software standards and be transferable via communication link to designated Authority network personal computers and portable (laptop) computers. From time to time, the Authority will upgrade software

7.1.5 Ownership of documents

MWAA

to later versions. Contractor is required to obtain and use Authority standard software (at contractor's expense) in the latest version in place.

C. It is understood that all materials purchased on behalf of the Authority, specifically market research, passenger and cargo data, shall be the sole property of the Authority and shall be maintained in a form that can be immediately delivered to the Authority upon request. Costs for market research, passenger and cargo data should be included in the Offeror's cost proposal, and will not be separately reimbursed. A copy of reports or other documents purchased on behalf of the Authority shall be made available to the Authority upon request.

D. It is understood that all materials produced and provided to the Authority are the sole property of the Authority.

E. It is also understood that all materials produced and provided to the Authority are confidential.

IAH

Excerpt from IAH Concessions Consulting Agreement:

3.4 Use of Work Products

Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, notes, plans, computations, databases, tabulations, exhibits, reports, underlying data, photographs, and other work products, and any modifications and improvements to them (collectively "Documents"), and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Contractor, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Contract (collectively "Works").

The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Contractor shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.

Contractor shall execute all documents required by the Director to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, creating, and enforcing

7.1.5 Ownership of documents

IAH

Proprietary Rights arising under this Contract. If Contractor's assistance is requested and rendered under this Section, the City shall reimburse Contractor for its Salary Cost and all Out-of-Pocket Costs it incurs in rendering assistance, subject to the availability of funds. On termination of this Contract, or if requested by the Director, Contractor shall deliver all Works to the City. Contractor shall obtain written agreements from the Authors which bind them to the terms in this Section.

All Works developed, written, or produced under this Contract for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."

Contractor may retain copies of the Documents for its archives. Contractor shall not otherwise use, sell, license, or market the Documents.

3.5 Time of Performance
Contractor acknowledges that time is of the essence in performance under this Contract and it agrees to timely and diligently prosecute all services to completion. Contractor shall not be responsible for delays caused by City. Further, the Director may, in his sole discretion, allow extensions for delays caused by third parties outside of the control of Contractor.

CHS

Excerpt from CHS Consultant Services Agreement:

2.7 Ownership Of Documents

A. All drawings and documents prepared in performance of this Agreement shall be delivered to and become the property of AUTHORITY upon completion of CONSULTANT'S services hereunder; provided, however, (1) CONSULTANT shall have the unrestricted right to their future use; (2) CONSULTANT shall retain its rights in its standard drawing details, designs, specifications, CADD files, databases, computer software, and any other proprietary property; and (3) CONSULTANT shall retain its rights to intellectual property developed, utilized, or modified in the performance of the services. Basic survey notes, design computations, and other data prepared under this shall Agreement shall be made available for use by the AUTHORITY without further compensation and without restriction or limitation on their use.

7.1.5 Ownership of documents

CHS

B. AUTHORITY may incorporate any portion of the drawings or documents into a project other than that for which they were performed, without further compensation to CONSULTANT provided, however, that (1) such drawings and documents shall thereupon be deemed to be the work product of AUTHORITY and AUTHORITY shall use same at its sole risk and expense; (2) AUTHORITY shall remove CONSULTANT'S names seal, endorsement, and all other indices of authorship from the drawings and documents.

7.1.6 Schedule and excusable delays

IAH

7.1.6 Schedule and excusable delays

Excerpt from IAH Concessions Consulting Agreement:

3.5 Time of Performance
Contractor *acknowledges that time is of the essence in performance under this Contract and it* ***agrees to timely and diligently prosecute all services*** *to completion.* ***Contractor shall not be responsible for delays caused by City.*** *Further, the* ***Director may,*** *in his sole discretion,* ***allow extensions*** *for delays caused by third parties outside of the control of Contractor.*

7.1.7 Budget

7.1.7 Budget

7.1.8 Confidentiality

IAH

7.1.8 Confidentiality

Excerpt from IAH Concessions Consulting Agreement:

4.5 Confidentiality
Contractor, its agents, employees, contractors and subcontractors shall hold all City information, data and documents (collectively, "Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors and subcontractors which bind them to the terms of this Section. Contractor shall not be held responsible for

disclosure of Information that is: (1) in Contractor's possession prior to its disclosure by the City, (2) disclosed by a third party who is not under a duty of confidentiality, (3) that is Public Information, or (4) required to be disclosed pursuant to court or administrative order or subpoena.

7.1.9 Warranties/ Errors and Omissions Insurance

PHX

7.1.9 Warranties/Errors and Omissions Insurance

Excerpt from PHX Professional Services Agreement:

22. PROFESSIONAL COMPETENCY

A. Qualifications
Consultant represents that it is familiar with the nature and extent of this Contract, the Services, and any conditions that may affect its performance under this Contract. Consultant further represents that it is fully experienced and properly qualified; is in compliance with all applicable license requirements; and, is equipped, organized, and financed to perform such Services.

B. Level of Care and Skill
Services provided by Consultant will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the Consultant's profession currently practicing in the same industry under similar conditions. Acceptance or approval by the City of Consultant's work shall in no way relieve Consultant of liability to the City for damages suffered or incurred arising from the failure of Consultant to adhere to the aforesaid standard of professional competence.

4. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the scope of services of this contract.
Each Claim $1,000,000
Annual Aggregate $2,000,000

a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

7.1.10 Professional certifications

7.10 Professional certifications

JAX

JAX Excerpt:

2.18 Licenses, Permits and Taxes. Company shall procure and keep in force during the term of this Agreement all necessary licenses (including, but not limited to, occupational licenses), driver's licenses for operators of motor vehicles, certificates, permits or other authorizations required by law for the operation of Company's business on the Airport. Company shall pay when due all license fees including, but not limited to, occupational license, certification, permit and examination fees in connection with its operations at the Airport. The cost of all such licenses, permits and fees shall be reimbursable expenses pursuant to Section 4.3.2.3. Company shall pay all taxes which may be levied, assessed or imposed by any governmental authority, (including the Authority) upon Company's property, or upon its operations at the Airport hereunder, however, all such taxes and other charges shall not be reimbursable to Company under Section 4. Company shall advise the Authority in a timely manner of any sales or similar taxes which may be due with respect to revenue collected by Company under this Agreement, and the Authority shall pay any such taxes directly to the taxing authority.

7.1.11 Payment terms

7.11 Payment Terms

IAH

IAH Excerpt:

For services rendered in accordance with the terms of this Contract, Contractor shall be paid, as appropriate, its Salary Costs at the hourly billing rates set forth in Exhibit "B," Out-of-Pocket Costs and Reimbursable Travel Costs ("Costs").

The City shall pay the foregoing Costs on the basis of monthly invoices, submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and an itemization of the Costs. The itemization shall include, where applicable, the following:

(1) An itemization of the type and cost of each item charged as an Out-of-Pocket Cost;
(2) Reimbursable Travel Costs with copies of original invoices (including a breakdown of the individual expenditures allowable as travel costs); and

(3) An itemization of Salary Cost for each employee actively engaged in performing services under this Contract.

7.1.11 Payment terms

IAH

All invoices are subject to approval by the Director and are due and payable on or about thirty (30) days after receipt and approval by Director. The City agrees that it will not unreasonably withhold or delay approval of payment of any invoice. Payments shall be made by check at Contractor's address as listed in Section 1.1 and shall be subject to Tex. Gov't Code Ann. §2251 (Vernon 1994).

7.1.12 Assignment

CHS

7.1.12 Assignment

Excerpt from CHS Consultant Agreement:

2.3 Assignment

CONSULTANT shall not assign or transfer this Agreement or any portion thereof, with the exception of CONSULTANT'S right to assign its accounts receivable for the purpose of obtaining or maintaining normal and customary financing and lines of credit, without the prior written consent of the AUTHORITY.

7.1. 13 Place of work

7.1.13 Place of work

7.1.14 Termination provisions

CHS

7.1.14 Termination provisions

Excerpt from CHS Consultant Agreement:

2.4 Termination

A. This Agreement may be terminated by either party by ten (10) days' written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party.

B. Upon receipt of termination notice, the CONSULTANT shall promptly discontinue all services affected (unless the notice directs otherwise) and deliver or otherwise make available to the AUTHORITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT in performing this

7.1.14 Termination provisions

CHS

Agreement, whether completed or in process. AUTHORITY agrees it will not use incomplete plans which are incomplete because of termination.

C. If this Agreement is terminated by the AUTHORITY, the CONSULTANT shall be paid for services rendered and expenses incurred prior to the termination in addition to termination settlement costs reasonably incurred by the CONSULTANT relating to commitments which had become firm prior to the termination. If termination of the Agreement occurs at the conclusion of one phase and prior to authorization of the AUTHORITY to begin the next phase, payment by the AUTHORITY of the completed phase shall be considered full compensation due CONSULTANT. If the Agreement is terminated by the AUTHORITY for default of the CONSULTANT, the amount due the CONSULTANT may be adjusted to the extent of any additional costs or damages incurred by the AUTHORITY as a result of the CONSULTANT'S default.

LAS

Excerpt from LAS Mystery Shopper Agreement:

C. Termination

1. *This Contract may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Contract through no fault of the terminating party; but only after the other party is given:*

    a. *not less than 10 calendar days' written notice of intent to terminate; and*
    b. *an opportunity for consultation with the terminating party prior to termination.*

2. *This Contract may be -terminated in whole or in part by the OWNER for its convenience; but only after the CONSULTANT is given:*

    a. *not less than 10 calendar days' written notice of intent to terminate; and*
    b. *an opportunity for consultation with the OWNER prior to termination.*

3. *If termination for default is effected by the OWNER, the OWNER will pay CONSULTANT that portion of the compensation which has been earned as of the effective date of termination but:*

7.1.14 Termination provisions

LAS

a. no amount shall be allowed for anticipated profit on performed or unperformed services or other work; and

b. any payment due to the CONSULTANT at the time of termination maybe adjusted to the extent of any additional costs occasioned to the OWNER by reason of the CONSULTANT's default.

4. Upon receipt or delivery by CONSULTANT of a termination notice, the CONSULTANT shall promptly discontinue all services affected (unless the notice directs otherwise) and deliver or otherwise make available to the OWNER's representative, copies of all deliverables as provided in Section I.

5. Upon termination, the OWNER may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event the CONSULTANT shall cease conducting business, the OWNER shall have the right to make an unsolicited offer of employment to any employees of the CONSULTANT assigned to the performance of this Contract.

6. If after termination for failure of the CONSULTANT to fulfill contractual obligations it is determined that the CONSULTANT has not so failed, the termination shall be deemed to have been effected for the convenience of the OWNER.